United Nations CAT/C/COG/CO/1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the initial report of the Congo*

1. The Committee against Torture considered the initial report of the Republic of the Congo (CAT/C/COG/1) at its 1294th and 1297th meetings (see CAT/C/SR.1294 and 1297), held on 22 and 23 April 2015, and adopted the following concluding observations at its 1314th, 1315th and 1316th meetings, held on 6 and 7 May 2015.

A. Introduction

2. The Committee welcomes the submission of the initial report but regrets that it was submitted 10 years late. It also regrets that the report does not contain statistical data and concrete examples relating to the implementation of the Convention.

3. The Committee appreciates the frank and open dialogue with the State party's high-level delegation, which outlined the situation and the many problems encountered in the implementation of the Convention in the Congo. It further appreciates the responses provided orally to the questions posed by Committee members during their consideration of the report.

B. Positive aspects

4. The Committee notes with appreciation that, since the entry into force of the Convention for the State party on 29 August 2003, the latter has ratified the following international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2009;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2010;

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2014;

(d) The Rome Statute of the International Criminal Court, in 2004.

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

5. The Committee welcomes the legislative steps taken by the State party to give effect to the Convention, including:

(a) The adoption in 2003 of Act No. 5-2003 on the responsibilities, organization and functioning of the National Human Rights Commission;

(b) The adoption in 2007 of Act No. 16-2007 on the establishment of the Anti-Corruption Observatory;

(c) The adoption in 2010 of Act No. 4-2010 on child protection in the Congo;

(d) The adoption in 2011 of Act No. 5-2011 on the promotion and protection of the rights of indigenous peoples.

6. The Committee notes with appreciation that the State party has extended an invitation to special procedures mandate holders of the Human Rights Council and it welcomes the visits by the Special Rapporteur on the rights of indigenous peoples in 2010 and by the Working Group on Enforced or Involuntary Disappearances in 2011.

7. The Committee notes with satisfaction that the death penalty has not been imposed in the State party since 1982 and that its *de jure* abolition is reportedly being considered under the current reform of criminal law. The Committee invites the State party to consider abolishing the death penalty in its domestic law and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a view to the abolition of the death penalty.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

8. Although article 9, paragraph 4, of the Constitution prohibits torture, the Committee notes with regret that there are no legislative or regulatory provisions that incorporate a definition of torture and other cruel, inhuman or degrading treatment. The Committee welcomes the information provided by the delegation indicating that seven codes, including the Criminal Code and the Code of Criminal Procedure, are currently being reformed and that this should lead to the creation of a specific offence of torture that takes into account the definition of torture provided for by the Convention. It further notes that the reform process is due to be completed in December 2015, with support from experts recruited as part of the Project of Activities to Strengthen the Rule of Law and Associations. While noting that a law on the prevention and punishment of torture is currently being drafted, the Committee regrets the lack of information on the time frames involved and the content of this bill (arts. 1 and 4).

The Committee recommends that the State party take the necessary measures to incorporate into the Criminal Code a specific definition of torture covering all the elements of the definition contained in article 1 of the Convention. It should also include therein provisions that criminalize and penalize acts of torture and other cruel, inhuman or degrading treatment or punishment and that establish penalties which are commensurate with the gravity of such acts. It further recommends that the State party take steps to include in the Criminal Code a provision on the non-applicability of statutory limitations to the crime of torture.

The Committee encourages the State party to fully involve civil society organizations in the ongoing legislative reform process.

The Committee invites the State party to expedite the ongoing legislative reform process and to take the necessary steps to promulgate and adopt, as soon as possible,

the new Criminal Code and Code of Criminal Procedure and the law on the prevention and punishment of torture.

The National Human Rights Commission

9. The Committee notes that in 2013, in the context of the universal periodic review, the State party accepted the recommendations to reinforce the mandate and capacities of the National Human Rights Commission, which still does not meet the criteria for A status accreditation under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Although the delegation indicated that some progress had been made in implementing the criteria provided for under the Paris Principles, the information provided does not enable the Committee to assess the progress achieved in relation to the selection process, the composition of the Commission's membership, the way it operates and its financial autonomy and independence. The Committee further notes that the Commission is empowered to conduct investigations into acts of torture either directly or at the request of individuals and to make recommendations to the courts but without being able to refer cases directly to them (art. 2, para. 1).

The State party should, without delay, take the necessary steps to:

(a) Ensure that the National Human Rights Commission is in full compliance with the Paris Principles and that it has sufficient financial resources to operate;

(b) Guarantee the Commission's institutional independence and ability to operate independently;

(c) Empower the Commission to refer a matter to the courts in cases where an investigation by it has identified sufficient evidence of acts of torture.

Allegations of torture and ill-treatment

10. The Committee is deeply concerned about the numerous allegations of acts of torture and ill-treatment committed in most of the country's places of detention, in particular in police stations, at the Directorate-General of National Security (DGST) and in gendarmeries. These acts are allegedly committed for the purpose of obtaining a confession by, in particular, law enforcement officials in the course of interrogations during police custody and preliminary investigations (arts. 2, 11, 12 and 13).

The State party should immediately take effective measures to investigate all acts of torture, to prosecute and punish those responsible and to ensure that torture is not used. It should unambiguously reaffirm the absolute prohibition of torture and publicly condemn its practice. It should make clear in the bill currently being drafted that anyone ordering, committing or otherwise complicit or acquiescent in such acts will be held personally responsible before the law and will be subject to criminal prosecution and appropriate penalties.

Fundamental legal safeguards

11. The Committee takes note of the State party's efforts to combat violations of fundamental legal safeguards, in particular by restructuring the police and the judiciary. Nevertheless, the Committee is alarmed at the large number of allegations it has received of arbitrary arrests and detentions, the failure to observe time limits on police custody, irregularities in the keeping of official registers and the failure to observe the right of all detained persons to inform their relatives of their detention. The Committee finds it regrettable that there is no provision for the right to see an independent doctor free of charge from the moment a person is taken into police custody, that pretrial detention is

systematic and statutory limits thereon are not observed, that there is no regular assessment of the lawfulness of pretrial detention and that lawyers are not present from the moment a person is taken into police custody. The Committee is concerned that access to free legal aid, as provided for under Act No. 1/84 of 20 January 1984 on the reorganization of legal aid, is not available in practice owing to the lack of an implementing decree. Although there is cooperation through the Project of Activities to Strengthen the Rule of Law and Associations, under which a 100,000 euro subsidy has been awarded to the National Bar Association to provide legal defence services to poor detainees, this solution remains limited and short term (arts. 2, 6 and 11).

The State party should take effective measures to ensure that the fundamental legal safeguards designed to protect persons arrested by the police are upheld, in law and in practice, including the following:

(a) The right of these persons to be promptly informed of the grounds of their arrest and their rights, in writing, in a language they understand, from the outset of detention;

(b) The right to see a lawyer from the moment of arrest and the right to receive effective free legal aid where needed;

(c) The right of these persons to be brought before a judge within the period provided for by law;

(d) The right to be examined by an independent doctor free of charge;

(e) The obligation to keep official detention registers;

(f) The right of all detained persons to inform their relatives of their detention.

The Committee also recommends that the State party strengthen the oversight of police custody by the public prosecutor's office.

Absolute prohibition of torture

12. The Committee is concerned at the lack of specific legal provisions establishing that the declaration of a state of emergency or any other exceptional circumstances do not permit any derogation from the absolute prohibition of torture (art. 2, para. 2).

The State party should enshrine in its Constitution and specify in its laws the principle of the absolute prohibition of torture, according to which no extraordinary circumstances may be invoked to justify such acts.

Conditions of detention

13. The Committee shares the alarming assessment of detention conditions provided by the State party itself, especially regarding the dilapidation of facilities, prison overcrowding, the lack of a social reintegration system in most prisons, the prison system's insufficient infrastructure and the lack of training of prison officials. These issues are compounded by reports from non-governmental organizations (NGOs) of violence, including sexual violence; the non-segregation of adults from minors and of remand prisoners from convicted prisoners; and inhuman and degrading living conditions, such as undernourishment, inadequate hygiene, bedding issues and the virtual lack of health-care services and of access to medication. The Committee has received allegations of corruption involving certain judges, prison officials and gendarmes to whom detainees reportedly pay money in exchange for their release or better detention conditions. The Committee notes the State party's efforts to refurbish the short-stay prisons in Brazzaville, Pointe Noire and Dolisie with the financial assistance of the European Development Fund and to build

prisons in Brazzaville, Pointe Noire and Owando as well as other parts of the country, although the construction schedule and completion dates for these projects have not been specified. The Committee finds regrettable the lack of information on the legal and regulatory framework governing the rights of detainees, disciplinary sanctions, monitoring regulations and the segregation of remand prisoners from convicted prisoners and of minors from adults (arts. 2, 11 and 16).

The State party should, as a matter of urgency:

(a) Ensure that detention conditions in the country's prisons are in line with international standards;

(b) Intensify its efforts to reduce prison overcrowding, including by adopting alternatives to deprivation of liberty for minor offences;

(c) Make available to prisons appropriate resources to provide health-care services and ensure that all detainees have access to medical assistance;

(d) Provide prisons with appropriate resources to eliminate undernourishment;

(e) Continue to implement plans to improve and develop the infrastructure of prisons and provide separate detention facilities for juvenile offenders and women;

(f) Take steps to increase the number and quality of training programmes for prison officials;

(g) Consider revising the legal and regulatory framework governing the organization and operation of prisons;

(h) Cooperate with NGOs that conduct monitoring activities and provide them with support;

(i) Set up social reintegration programmes for prisoners.

Universal jurisdiction in criminal matters

14. The Committee notes that the State party has no legislation establishing universal criminal jurisdiction over torture. The Committee takes note of the State party's statement that, pursuant to the reform of the codes, provisions on the fulfilment of its obligations under article 5 of the Convention against Torture will be incorporated into domestic law (art. 5).

The Committee invites the State party to incorporate into its domestic legislation provisions establishing universal criminal jurisdiction in keeping with article 5 of the Convention against Torture.

Complaints and the protection of victims and witnesses

15. The Committee takes note of the information provided by the State party that all persons who claim to be victims of acts of torture may lodge a complaint with the competent court and that any threats against witnesses or victims are punishable. However, the Committee is concerned at the low number of complaints, which is reportedly due to the deterioration and sluggishness of legal proceedings, the fear of reprisals and the lack of effective legal aid (art. 13).

The Committee invites the State party to:

(a) Put in place the necessary conditions to ensure that all victims of torture or cruel, inhuman or degrading treatment or punishment can file a complaint;

(b) Take all necessary legal and administrative steps to ensure the protection of victims of torture or cruel, inhuman or degrading treatment or punishment, members of their families and witnesses at every stage of proceedings.

Impunity: need for investigations and prosecutions

16. The Committee is concerned at reports of impunity in cases of enforced disappearance, torture or ill-treatment, including brutality and excessive use of force during police operations. It takes note of the information provided by the State party to the effect that it has established the domestic legal conditions required for the punishment of torture, but remains concerned that law enforcement officials and military personnel suspected of having committed acts of torture appear rarely to be prosecuted. The Committee is further concerned at the State party's failure to investigate the numerous allegations of torture or ill-treatment that, in some cases, is said to have led to the death of persons detained in places of deprivation of liberty. Such impunity is an additional barrier to the bringing of legal actions by citizens of the State party (arts. 12, 13 and 16).

The State party should:

Take the appropriate steps to ensure that all allegations of enforced disappearance, torture, ill-treatment or death in custody are promptly, thoroughly and impartially investigated, that the perpetrators of these acts are prosecuted and, if found guilty, are given sentences commensurate with the gravity of the offence.

Redress for and rehabilitation of victims of torture

17. While noting that the State party's legal system recognizes the right of victims of acts of torture to fair and equitable redress under the general rules on civil and administrative liability, the Committee notes the lack of information on the implementation of the relevant redress mechanism (art. 14).

The State party should put in place a legislative framework and a clear procedure enabling all victims to enjoy their right to redress, in accordance with article 14 of the Convention and as set out by the Committee in its general comment No. 3 (2012) on the implementation of article 14 by States parties.

Refugees and asylum seekers

18. The Committee welcomes the State party's continued efforts to ensure access to its territory for refugees and asylum seekers, in accordance with article 3 of the Convention. Nevertheless, the Committee notes with concern the current lack of any comprehensive legislation on asylum and refugees. The Committee is also concerned at reports of physical abuse, ill-treatment and sexual violence allegedly carried out by the police authorities against a large number of nationals of the Democratic Republic of the Congo following a police operation entitled *Mbata ya bakolo*, which took place in April 2014. While taking note of the administrative sanctions imposed and the criminal proceedings initiated against 18 police officers who were responsible for serious human rights violations during that operation, the Committee regrets the lack of information on the status of those proceedings and the type of criminal sanctions envisaged. The Committee is also concerned at reports of numerous cases of refoulement to the Democratic Republic of the Congo in the wake of the above-mentioned police operation (arts. 3, 11 and 16).

The Committee recommends that the State party:

(a) Strengthen its domestic legislative framework by drafting a comprehensive law on asylum containing specific provisions on non-refoulement and access to its territory, in accordance with article 3 of the Convention;

(b) Continue, in cooperation with the Office of the United Nations High Commissioner for Refugees, its efforts to identify refugees and asylum seekers and to ensure their protection, in accordance with international law, by respecting, in particular, the principle of non-refoulement, including during specific police operations;

(c) Ensure that the detention of asylum seekers and refugees is used only as a measure of last resort and, where necessary, for as short a period as possible;

(d) Ensure that the legal safeguards are respected, in accordance with article 11 of the Convention;

(e) Ensure that investigations are carried out effectively and that refugees and asylum seekers allegedly subjected to torture or other cruel, inhuman or degrading treatment by State or private actors, including victims of rape and domestic violence, have access to remedies, as set out by the Committee in its general comment No. 2 (2007) on the implementation of article 2 by States parties;

(f) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Trafficking in persons

19. The Committee notes with interest the information provided by the State party on the anti-trafficking bill, a national action plan against trafficking in persons currently being prepared in cooperation with the United Nations Office on Drugs and Crime and the agreement signed between Congo and Benin in 2011 on the protection of children against trafficking in persons. The Committee notes with concern that the State party has not yet deposited the instrument of ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime or signed the Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children, in West and Central Africa (Abuja Agreement) (arts. 2 and 16).

The Committee invites the State party to speed up the adoption of the anti-trafficking bill and to accede to the international instruments combating trafficking in persons.

Violence against women

20. In the light of reports of very large numbers of women victims of sexual violence in times of conflict and of the information provided by the State party on current cases of sexual violence against increasingly young girls, the Committee notes with interest the existence of a bill on gender violence currently awaiting adoption by the State party prior to submission to Parliament. However, the Committee has not received any information on the content of that bill, the mechanisms for combating and preventing violence against women, especially sexual abuse and exploitation in prison and in conflict areas, or the time frame for the adoption of the bill (arts. 2 and 16).

The Committee invites the State party to adopt, without delay, a comprehensive law punishing all forms of violence against women, including marital rape, female genital mutilation and sexual abuse and exploitation of women in prison and in conflict areas.

Training

21. The Committee regrets the paucity of the information provided by the State party on human rights training programmes for law enforcement agents, officials of the General Directorate of Prison Administration, medical staff, forensic specialists and judges. It notes with concern that the Standing Technical Committee on the Dissemination of International

Humanitarian Law and Human Rights Law established by Decree No. 159-2007 of 14 February 2007 is reportedly not able to carry out its human rights training activities owing to a lack of funding (art. 10).

The State party should:

(a) Allocate sufficient financial resources to provide regular training programmes, in order to ensure that all State officials involved in the custody, interrogation or treatment of persons under State control are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated and that the perpetrators of offences will be brought to trial;

(b) Assess the effectiveness and impact of training and education programmes in terms of reducing the number of cases of torture and ill-treatment,

(c) Provide support for training for all competent officials, including medical personnel, on the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and on gender-based violence.

Data collection

22. While noting the recent launch of the National Centre for Statistics, the Committee regrets the lack of comprehensive, disaggregated data on the number of complaints, investigations, prosecutions and convictions, on any reparation awarded to victims relating to acts of torture and ill-treatment attributed to law enforcement officials and on the lack of data on the number and cause of deaths in detention.

The State party should:

(a) Collect statistical data, disaggregated by age and sex of the victim, for use in monitoring the implementation of the Convention at the national level, in particular, data on complaints, investigations, prosecutions, convictions and compensation for acts of torture and ill-treatment attributed to law enforcement officials and committed against persons held in police custody, prison or other places of deprivation of liberty. Statistical data should also be provided on the number and cause of deaths in detention;

(b) Request the Office of the High Commissioner for Human Rights to provide technical cooperation assistance in order to increase its capacity to take action in response to the Committee's request.

Follow-up procedure

23. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations contained in paragraph 8 concerning the definition and criminalization of torture, paragraph 9 concerning the National Human Rights Commission, paragraph 10 concerning allegations of torture and ill-treatment and paragraph 13 concerning conditions of detention, especially subparagraph (d) on the resources to eliminate undernourishment.

Other issues

24. The Committee invites the State party to consider speeding up the process of ratifying the main United Nations human rights instruments to which it is not yet party, namely:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(d) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(e) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

25. The Committee invites the State party to make the declaration provided for in article 22 of the Convention against Torture, thereby recognizing the Committee's competence to receive and consider communications from or on behalf of individuals subject to the jurisdiction of the State party who claim to be victims of a violation by a State Party of the provisions of the Convention.

26. The State party is requested to disseminate widely the report it has submitted to the Committee and the present concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

27. The Committee invites the State party to submit its next periodic report, which will be its second, by 15 May 2019. To this end, the Committee invites the State party to agree, by 15 May 2016, to prepare its report under the optional reporting procedure whereby the Committee will transmit to the State party a list of issues prior to reporting. The State party's replies to the list of issues will constitute its second periodic report under article 19 of the Convention.